

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 372 be amended to read as follows:

- 1           Page 2, between lines 25 and 26, begin a new paragraph and
- 2       insert:
- 3           "SECTION 1. IC 13-11-2-149.5 IS ADDED TO THE INDIANA
- 4       CODE AS A NEW SECTION TO READ AS FOLLOWS
- 5       [EFFECTIVE JULY 1, 2000]: **Sec. 149.5. "Outstanding national**
- 6       **resource water", for purposes of IC 13-18-3, has the meaning set**
- 7       **forth in IC 13-18-3-2(b).**
- 8           SECTION 2. IC 13-11-2-149.6 IS ADDED TO THE INDIANA
- 9       CODE AS A NEW SECTION TO READ AS FOLLOW [EFFECTIVE
- 10       JULY 1, 2000]: **Sec. 149.6. "Outstanding state resource water", for**
- 11       **purposes of IC 13-18-3, has the meaning set forth in**
- 12       **IC 13-18-3-2(c)."**
- 13           Page 2, between lines 36 and 37, begin a new paragraph
- 14       and insert:
- 15           "SECTION 3. IC 13-11-2-265.5 IS ADDED TO THE INDIANA
- 16       CODE AS A NEW SECTION TO READ AS FOLLOWS
- 17       [EFFECTIVE JULY 1, 2000]: **Sec. 265.5. "Watershed", for purposes**
- 18       **of IC 13-18-3, has the meaning set forth in IC 14-8-2-310."**
- 19           Page 4, between lines 12 and 13, begin a new paragraph and
- 20       insert:
- 21           "SECTION 4. IC 13-18-2-3 IS ADDED TO THE INDIANA
- 22       CODE AS A NEW SECTION TO READ AS FOLLOWS
- 23       [EFFECTIVE JULY 1, 2000]: **Sec. 3. (a) The department shall**
- 24       **prepare a list of impaired waters for the purpose of complying with**
- 25       **federal regulations implementing Section 303(d) of the federal**
- 26       **Clean Water Act (33 U.S.C. 1313(d)). In determining whether a**

1 water body is impaired, the department shall consider all existing  
2 and readily available water quality data and related information.  
3 The department, before submitting the list to the United States  
4 Environmental Protection Agency, shall:

- 5 (1) publish the list in the Indiana Register;
- 6 (2) make the list available for public comment for at least  
7 ninety (90) days; and
- 8 (3) present the list to the board.

9 If the United States Environmental Protection Agency changes the  
10 list, the board shall publish the changes in the Indiana Register and  
11 conduct a public hearing withing ninety (90) days after receipt of  
12 the changes.

13 (b) The board shall adopt by rule the methodology to be used  
14 in identifying waters as impaired. The rule shall specify the  
15 methodology and criteria for including and removing waters from  
16 the list of impaired waters.

17 (c) The list of impaired waters developed by the department  
18 shall contain a priority ranking of waters that are identified as  
19 impaired and for which total maximum daily loads will be  
20 required, as well as a schedule for the development of required  
21 total maximum daily loads. The schedule must be sufficient to  
22 ensure that all required total maximum daily loads will be  
23 developed using a phased approach within fifteen (15) years of the  
24 date the list is approved by the United States Environmental  
25 Protection Agency, or by the time prescribed in federal regulations,  
26 whichever is sooner.

27 (d) The department shall make a reasonable and fair  
28 allocation among sources when developing total maximum daily  
29 loads. The department shall consider public input before making  
30 the allocation. At a minimum, the department shall consider:

- 31 (1) the technological feasibility of achieving the allocation;
- 32 (2) the cost and benefit associated with achieving the  
33 allocation; and
- 34 (3) any pollutant loading reductions reasonably expected to  
35 be achieved as a result of other legally required actions or  
36 voluntary measures.

37 (e) The total maximum daily load implementation plan shall  
38 at a minimum provide for follow up monitoring of the impaired  
39 water body and any necessary revision of the total maximum daily  
40 load allocations in order to assure compliance with water quality  
41 standards. To ensure that the water quality standards are attained  
42 and maintained, the department shall review the status of the  
43 impaired water body in accordance with the monitoring plan as set  
44 forth in the total maximum daily load implementation plan.

45 (f) Before July 1, 2005, the department shall submit a report  
46 to the governor, the environmental quality service council, the  
47 board, the speaker of the house of representatives, and the  
48 president pro tempore of the senate detailing progress made under  
49 this section. At a minimum, the report shall evaluate the  
50 effectiveness of the program and identify any recommended  
51 statutory changes to make the program more efficient, effective,  
52 and equitable.

SECTION 5. IC 13-18-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) The board may adopt rules under IC 4-22-2 that are necessary to the implementation of:

(1) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as in effect January 1, 1988; and

(2) the federal Safe Drinking Water Act (42 U.S.C. 300f through 300j), as in effect January 1, 1988;

except as provided in IC 14-37.

(b) **"Outstanding national resource water"** means a water designated as such by the general assembly. The designation shall describe the quality of the outstanding national resource water to serve as the benchmark of the water quality that shall be maintained and protected. Waters that may be considered for designation as outstanding national resource waters include water bodies that are recognized as:

(1) important because of protection through official action, such as:

(A) federal or state law;

(B) presidential or secretarial action;

(C) international treaty; or

(D) interstate compact;

(2) having exceptional recreational significance;

(3) having exceptional ecological significance;

(4) having other special environmental, recreational, or ecological attributes; or

(5) waters with respect to which designation as an outstanding national resource water is reasonably necessary for protection of other water bodies designated as outstanding national resource waters.

(c) **"Outstanding state resource water"** means a water designated as such by the board. Waters that may be considered for designation as outstanding state resource waters include water bodies that have unique or special ecological, recreational, or aesthetic significance.

(d) **"Watershed"** has the meaning set forth in IC 14-8-2-310.

(e) The board may designate a water body as an outstanding state resource water by rule if the board determines that the water body has a unique or special ecological, recreational, or aesthetic significance.

(f) Before the board may adopt a rule designating a water body as an outstanding state resource water, the board must consider the following:

(1) Economic impact analyses, presented by any interested party, taking into account future population and economic development growth.

(2) The biological criteria scores for the water body, using factors that consider fish communities, macro invertebrate communities, and chemical quality criteria using representative biological data from the water body under

1 consideration.

2 (3) The level of current urban and agricultural development  
3 in the watershed.

4 (4) Whether the designation of the water body as an  
5 outstanding state resource water will have a significant  
6 adverse effect on future population, development, and  
7 economic growth in the watershed, if the water body is in a  
8 watershed that has more than three percent (3%) of its land  
9 in urban land uses and serves a municipality with a  
10 population greater than five thousand (5,000).

11 (5) Whether the designation of the water body as an  
12 outstanding state resource water is necessary to protect the  
13 unique or special ecological, recreational, or aesthetic  
14 significance of the water body.

15 (g) The commissioner shall present a summary of the  
16 comments received from the comment period and information that  
17 supports a water body designation as an outstanding state resource  
18 water to the environmental quality service council not later than  
19 one hundred twenty (120) days after the rule regarding the  
20 designation is finally adopted by the board.

21 (h) Notwithstanding any other provision of this section, the  
22 designation of an outstanding state resource water in effect on  
23 January 1, 2000, remains in effect.

24 (i) For a water body designated as an outstanding state  
25 resource water, the board shall provide by rule procedures that  
26 will result in a net improvement in water quality for the  
27 outstanding state resource water while also providing for changes  
28 and additions to existing permittees' pollutant loadings and  
29 allowing for new permits. These procedures must include the  
30 following:

31 (1) A definition of significant lowering of water quality that  
32 includes a de minimis quantity of additional pollutant load  
33 when a new or increased permit limit is required below  
34 which antidegradation implementation procedures do not  
35 apply.

36 (2) Utilization of water quality data that is less than five (5)  
37 years old and specific to the outstanding state resource  
38 water.

39 (3) Provisions that:

40 (A) allow for the use of voluntary water quality projects  
41 undertaken in the watershed of the outstanding state  
42 resource water that result in demonstrable net  
43 environmental improvement in the watershed of the  
44 outstanding state resource water;

45 (B) establish criteria for timely approval of projects  
46 described in clause (A);

47 (C) establish a process for public input in the approval  
48 process.

49 (4) A watershed improvement fee structure to remove  
50 requirements for projects described in subdivision (3) upon

1 payment by the permittee of a fee commensurate with the  
 2 type and quantity of increased pollutant loadings not to  
 3 exceed five hundred thousand dollars (\$500,000) for any one  
 4 permit.

5 (5) Criteria for using the watershed improvement fees to  
 6 fund watershed projects in the watershed that result in  
 7 improvement in water quality.

8 (j) For a water body designated as an outstanding state  
 9 resource water after June 30, 2000, the board shall provide by rule  
 10 antidegradation implementation procedures for the water body  
 11 before it is designated.

12 (k) A water body may be designated as an outstanding national  
 13 resource water only by the general assembly after  
 14 recommendations for designation are made by the department and  
 15 the environmental quality service council.

16 (l) Before recommending the designation of an outstanding  
 17 national resource water, the department shall provide for an  
 18 adequate public notice and comment period regarding the  
 19 designation. The commissioner shall present a summary of the  
 20 comments and information received during the comment period  
 21 and the department's recommendation concerning designation to  
 22 the environmental quality service council not later than ninety (90)  
 23 days after the end of the comment period. The council shall  
 24 consider the comments, information, and recommendation  
 25 received from the department, and shall convey its  
 26 recommendation concerning designation to the general assembly."

27 Page 6, between lines 17 and 18, begin a new paragraph and  
 28 insert:

29 "SECTION 6. [EFFECTIVE UPON PASSAGE] (a) As used in  
 30 this SECTION, "board" refers to the water pollution control board  
 31 established under IC 13-18-1.

32 (b) All waters designated under 327 IAC 2-1.5-19(b) as  
 33 outstanding state resource waters shall be maintained and  
 34 protected in their present quality in accordance with 327  
 35 IAC 5-2-11.7. Any rule adopted by the board contrary to this  
 36 standard is void.

37 (c) Except as provided in subsection (b), 327 IAC 2-1-2 and 327  
 38 IAC 2-1-6 are void to the extent that they:

39 (1) require that an outstanding state resource water must be  
 40 maintained and protected in its present high quality without  
 41 degradation; or

42 (2) provide that a use designation requires that a water must  
 43 be maintained and protected without degradation.

44 (d) The board may not:

45 (1) require that an outstanding state resource water must be  
 46 maintained and protected in its present high quality without  
 47 degradation; or

48 (2) provide that a use designation requires that a water must  
 49 be maintained and protected without degradation.

50 (e) Before January 1, 2001, the board shall amend 327

1 IAC 2-1-2 and 327 IAC 2-1-6 to reflect subsection (c).

2 (f) This SECTION expires on the earlier of:

3 (1) the effective date of the rule amendments adopted by the  
4 board under subsection (e); or

5 (2) January 1, 2001.

6 SECTION 7. [EFFECTIVE UPON PASSAGE] (a) Before  
7 January 1, 2001, the water pollution control board shall amend 327  
8 IAC 2-1-2, 327 IAC 2-1-6(i), and 327 IAC 2-1.5-4 to reflect  
9 SECTION 3 of this act.

10 (b) This SECTION expires on the earlier of the following:

11 (1) The effective date of the rule amendment adopted under  
12 subsection (a).

13 (2) January 1, 2001.

14 SECTION 8. [EFFECTIVE UPON PASSAGE] (a) As used in this  
15 SECTION, "department" refers to the department of  
16 environmental management.

17 (b) Before July 1, 2001, the department shall develop and  
18 maintain a quality assurance program plan and information  
19 management system to assess the validity and reliability of the data  
20 used in the implementation of IC 13-18-2-3, as added by this act,  
21 and IC 13-18-3-2, as amended by this act.

22 (c) The department:

23 (1) shall make data from the information management  
24 system under subsection (b) available to the public upon  
25 request; and

26 (2) may charge a reasonable fee to persons requesting the  
27 data.

28 (d) The department shall use the data from the information  
29 management system under subsection (b) to review the data as of  
30 January 1, 2002, supporting:

31 (1) the listing of impaired waters under IC 13-18-2-3, as  
32 added by this act; and

33 (2) the special designation of waters under IC 13-18-3-2, as  
34 amended by this act.

35 (e) Before September 1, 2000, the department shall appoint a  
36 water quality task force to assess the physical, chemical, and  
37 biological data collected and used by the department. The water  
38 quality task force is a subcommittee of, and shall report to, the  
39 department. The department shall study the issues associated with  
40 the implementation of IC 13-18-3-2, including:

41 (1) surface water assessment methodologies;

42 (2) program resource needs; and

43 (3) policy options and rule development recommendations.

44 (f) The water quality task force appointed under subsection (f)  
45 shall include four (4) members of the general assembly, the  
46 chairperson of the environmental quality service council, and  
47 representatives of the following:

48 (1) The academic community in the disciplines of biology,  
49 chemistry, and hydrology.

50 (2) The department.

- (3) The department of natural resources.
- (4) The United States Geological Survey.
- (5) Private chemical water testing laboratories.
- (6) Industry.
- (7) Agriculture.
- (8) Environmental advocacy organizations.
- (9) General citizens.
- (10) Municipalities.
- (11) The water pollution control board.
- (12) Local public health officials.
- (13) The state department of health.

(g) This SECTION expires October 1, 2002.

SECTION 9. [EFFECTIVE UPON PASSAGE] (a) Until October 1, 2002, the following apply to a water body designated before October 1, 2002, as an exceptional use water:

- (1) The water body is subject to the net water quality improvement provisions of IC 13-18-3-2(i), as added by this act.
- (2) The water body is not subject to a standard of having its water quality maintained and protected without degradation.

(b) Before October 1, 2002, the water pollution control board established under IC 13-18-1 shall:

- (1) determine whether, effective October 1, 2002, to designate as an outstanding state water each water designated before October 1, 2002, as an exceptional use water under 327 IAC 2-1-11; and
- (2) complete rulemaking to make any designation determined under subdivision (1).

(c) This SECTION expires January 1, 2003.

SECTION 10. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "board" refers to the water pollution control board established under IC 13-18-1.

(b) Before October 1, 2003, the board shall establish policies and rules to govern the implementation of total maximum daily load requirements of Section 303(d) of the Clean Water Act, 33 U.S.C. 1313(d).

(c) Before July 1, 2000, the chairperson of the environmental quality service council shall appoint a working group of stakeholders with respect to the implementation of maximum daily load requirements as described in subsection (b). The working group shall consider and make recommendations to the department of environmental management and the board on identification of issues, the development of policy options, policy adoption, and rulemaking. The working group shall include representatives from:

- (1) the general public;
- (2) municipalities;
- (3) industry;
- (4) business;
- (5) agriculture;

- 1           **(6) environmental advocacy groups; and**  
2           **(7) others with a high level of expertise in the subject area to**  
3           **be considered by the working group.**  
4           **(d) The working group appointed under subsection (c) shall**  
5           **also include the following members, all appointed by the**  
6           **chairperson of the environmental quality service council:**  
7           **(1) a representative of the environmental quality service**  
8           **council;**  
9           **(2) a technical secretary; and**  
10          **(3) a member of the board.**  
11          **(e) This SECTION expires October 1, 2003."**  
12          Page 6, after line 20 , begin a new paragraph and insert:  
13          "SECTION 12. An emergency is declared for this act."  
14          Renumber all SECTIONS consecutively.  
            (Reference is to ESB 372 as printed February 17, 2000.)

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Representative LUTZ J